

ACQUISITION OF EXISTING PROCESSING, MARKETING,  
AND HANDLING FACILITIES BY FARMER COOPERA-  
TIVES

JULY 15, 1959.—Ordered to be printed

Mr. HUMPHREY, from the Committee on Agriculture and Forestry,  
submitted the following

## REPORT

[To accompany S. 2014]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 2014) to clarify and amend the Capper-Volstead Act (42 Stat. 388, 7 U.S.C. 291-292), and for other purposes, having considered the same, report thereon with a recommendation that it do pass with amendments.

This bill, which with the committee amendment is similar in substance to H.R. 7391 now pending before the Committee on Agriculture of the House, would permit farmer cooperatives to acquire existing processing, marketing, and handling facilities. Farmers are now permitted by section 6 of the Clayton Act and section 1 of the Capper-Volstead Act to join together in processing, preparing, handling, and marketing their products; but in *United States v. Maryland and Virginia Milk Producers Association* (167 F. Supp. 45, and 168 F. Supp. 880), it was held that this immunity did not permit the association to acquire the assets of an existing dairy and the outstanding stock of two other dairies. Such acquisitions were held to violate sections 1 and 3 of the Sherman Act as conspiracies with other than farmers (the sellers of such assets and stock) in restraint of trade, and to violate section 7 of the Clayton Act, which prohibits the acquisition of the stock or assets of other corporations in interstate commerce where such acquisition tends to lessen competition. These decisions cast doubt upon past and prospective acquisitions of facilities by many and varied farmer cooperatives, which have relied on the authority of the Capper-Volstead Act to engage in processing, preparing, handling, and marketing various products. The bill would make it clear that they may acquire facilities to carry out such activities from whatever source and would remove any question concerning past acquisitions. The bill subjects such acquisitions and their ownership

## 2 ACQUISITION OF CERTAIN FACILITIES BY FARMER COOPERATIVES

and operation as well as the marketing and pricing activities, contracts, and practices of the cooperatives to the exclusive jurisdiction of the Secretary of Agriculture. Under section 2 of the Capper-Volstead Act, the Secretary has authority to issue cease-and-desist orders if any cooperative's activities have unduly enhanced the price of any agricultural product.

Appeals in the Maryland and Virginia case are pending in the Supreme Court, and the Department of Agriculture has suggested that the pendency of such appeals might be a reason for deferring action on the bill. The committee felt, however, that passage of the bill would provide immediate clarification of the law, and assure its interpretation in the manner which the committee feels will best serve the public interest.

In supporting the bill before the subcommittee Senator Long cited a report of the House Committee on Agriculture as follows:

The extreme importance of maintaining, fostering, and promoting this "home-owned and operated" system of marketing of farm products was emphasized just recently by the House Committee on Agriculture, which on June 1, 1959 published a report entitled "Food Cost Trends." In the foreword to this report, Chairman Harold D. Cooley of the House committee stated:

"This document, assembled from official source materials, shows the widening spread between the price the farmer receives and what the consumer pays, for food. It illustrates graphically the deterioration in farm income during recent years while other areas of the Nation's economy have experienced unprecedented purchasing power and general prosperity. Prices received by farmers have gone down, while prices between the farm gate and the retail food counter have increased substantially. \* \* \* We are the best fed of all nations. Yet our farm people receive less than half the income for their labors as do people who work in the towns and cities. It is my view, therefore, in consideration of the facts herein set forth, that it is incumbent upon our Government to develop public policies which will enable farmers to participate equitably, along with industry, business, and labor, in the rewards of the American free enterprise system."

The report of the House committee goes on to state, at page 1, that "retail food prices have increased 20 percent in the past 10 years, while prices received by the farmers have declined 8 percent." And the same report sets forth this conclusion, at page 2:

"The depressing consequences of farmers' lack of bargaining power in our present highly organized economy is nowhere more evident than in the divergent trends of farm and retail food prices in recent years. *Processors and marketing agents, the middlemen between farmers and consumers, \* \* \* have been successful in adding greatly increased charges to the farmers' products before they reached the consumers.*"

The National Council of Farmer Cooperatives, representing about 5,000 cooperatives with a membership of several million members, advised the subcommittee of its support for the bill.

The committee amendments to the text and title of the bill represent clarifications submitted to the committee by the author of the bill, Senator Long.

It does not appear that enactment of the bill would result in any additional Federal expenditure.

## DEPARTMENTAL VIEWS

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., June 30, 1959.

HON. ALLEN J. ELLENDER,  
*Chairman, Committee on Agriculture and Forestry,*  
*U.S. Senate.*

DEAR SENATOR ELLENDER: This is in further reply to your letter of May 21, 1959, requesting a report on S. 2014, a bill to clarify and amend the Capper-Volstead Act (42 Stat. 388, 7 U.S.C. 291-292) and for other purposes.

This bill would amend section 1 of the Capper-Volstead Act so as to declare specifically that any farmer cooperative within the act may own and operate marketing facilities for the purpose of selling its products at wholesale and/or retail and may acquire the stock or assets of existing marketing facilities such as a store, warehouse, market, or dairy. It would legalize any such acquisition retroactively. Also, it would place "all such associations and their activities, contracts, and practices," under "the exclusive jurisdiction of the Secretary of Agriculture and the remedy and procedures provided in section 2" of the Capper-Volstead Act. This is an administrative procedure leading to a cease-and-desist order, enforceable by the Department of Justice, if the Secretary has reason to believe that the cooperative's activities have unduly enhanced the price of an agricultural product.

The apparent intent of the bill is to accord farmer marketing cooperatives complete immunity from the antitrust laws except, perhaps, where they combine or conspire with others. Since it has retroactive application, it would also, in effect, legislatively countermand the U.S. district court's decisions in *United States v. Maryland and Virginia Milk Producers Association* (167 F. Supp. 45 and 799; 168 F. Supp. 880).

The Department recommends against enactment of this bill and believes that consideration of legislation of this type should be deferred until the U.S. Supreme Court has disposed of the pending appeals in the case against Maryland and Virginia Milk Producers Association.

Processors of agricultural products not owned by farmers cooperatively, particularly in the dairy field, and retail distributors of food have through mergers and asset acquisitions grown tremendously in size and have concentrated operations during the past 10 to 15 years. Accordingly, the Department has recognized the need for farmer cooperatives to grow comparably and engage in more integrated operations if they are to render maximum service to their farmer members under current market conditions.

However, until the Supreme Court has acted on the pending case, it seems too early to assess whether farmers through their cooperatives are able to achieve efficient and adequate service within the scope of

#### 4 ACQUISITION OF CERTAIN FACILITIES BY FARMER COOPERATIVES

existing laws or whether new legislation would appear to be necessary to clarify their status.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

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